

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TOLEDO MACK SALES & }
SERVICE, INC., }
} Plaintiff, } Civil Action No.
} v. } 2:02-CV-04373-RLB
} } JURY TRIAL DEMANDED
MACK TRUCKS, INC., }
} Defendant. }

MACK TRUCKS, INC., }
} Plaintiff, }
} v. } } JURY TRIAL DEMANDED
TOLEDO MACK SALES & }
SERVICE, INC., and }
} PAI INDUSTRIES, INC., }
950 Northbrook Parkway }
Suwanee, Georgia, }
} Defendants. }

**COUNTERCLAIM DEFENDANT PAI INDUSTRIES, INC.'S MOTION
TO DISMISS COUNT V OF DEFENDANT/COUNTERCLAIM PLAINTIFF
MACK TRUCK, INC.'S COUNTERCLAIM**

COMES NOW Counterclaim Defendant PAI Industries, Inc. ("PAI") and moves the Court, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Count V of Defendant/Counterclaim Plaintiff Mack Trucks, Inc.'s ("Mack") Counterclaim, on the grounds that Count V fails to state a claim upon which relief may be granted.

In support of its Motion, PAI relies upon its Memorandum of Law In Support of Its Motion to Dismiss, filed simultaneously herewith.

WHEREFORE, PAI respectfully requests that its Motion be GRANTED, and that Count V of Mack's Counterclaim be dismissed with prejudice.

This 16th day of September, 2002.

Respectfully submitted,

WIGGIN & DANA LLP

By: _____

Joseph Schumacher
Kimberly S. Toomey
Quaker Park
1001 Hector Street
Conshohocken, Pennsylvania 19428
(610) 834-2400
(610) 834-3055 fax

Attorney for Counterclaim
Defendant PAI Industries, Inc.

OF COUNSEL

Stephen M. Dorvee
Ga. Bar 226989
Scott E. Taylor
Ga. Bar 785596
Ashley M. Steiner
Ga. Bar 678211
ARNALL GOLDEN GREGORY LLP
2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 873-8500
(404) 873-8501 fax

CERTIFICATE OF SERVICE

I hereby certify that, on September 16, 2002 I served the foregoing **COUNTERCLAIM DEFENDANT PAI INDUSTRIES, INC.'S MOTION TO DISMISS** by First Class U.S. mail to:

Jon A. Baughman
Jeremy Heep
Barak A. Bassman
Pepper Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103-2799

Wayne A. Mack
J. Manly Parks
Duane Morris LLP
One Liberty Place
Philadelphia, PA 19103-7396

Kimberly S. Toomey